

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

TEREK RAHEEM DOWNING	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 05-568-SLR
	)	
CORRECTIONAL OFFICER ART	)	
DAVIS, CORRECTIONAL OFFICERS	)	
and STAFF – to be named later,	)	
FIRST CORRECTIONS MEDICAL,	)	
INC., WARDEN THOMAS CARROLL,	)	
M. JANE BRADY, DELAWARE	)	
DEPARTMENT OF CORRECTIONS and	)	
DELAWARE DEPARTMENT OF COURT	)	
and TRANSIT,	)	
	)	
Defendants.	)	

**DEPARTMENT OF JUSTICE’S *EX PARTE* MOTION FOR REFERRAL TO  
PRESIDENT JUDGE OF SUPERIOR COURT FOR APPOINTMENT OF  
COUNSEL**

STATE OF DELAWARE  
DEPARTMENT OF JUSTICE

/s/Ophelia M. Waters  
Ophelia M. Waters, I.D. No. 3879  
Deputy Attorney General  
Carvel State Office Building  
820 North French Street, 6<sup>th</sup> Floor  
Wilmington, Delaware 19801  
(302) 577-8400

Dated: March 6, 2006

Attorney for Department of Correction

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

TEREK RAHEEM DOWNING	)	
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Plaintiff,	)	
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COUNSEL**

COMES NOW Delaware Department of Justice, by and through undersigned counsel, and respectfully moves this Honorable Court to refer this case to the President Judge of the Superior Court of the State of Delaware for appointment of counsel. In support of this motion, the Department of Justice offers the following:

1. The State Department of Justice represents the Department of Correction officials and employees, and the former State Attorney General Brady named as defendants in the above-captioned case. The action was brought for acts arising from defendants’ employment by the State.
2. The Department of Justice has determined that there is a conflict of interest in

representing one of the defendants in the federal action, Arthur Davis.

3. In accordance with its past practice, Delaware law and rules of court, the Department of Justice hereby petitions the United States District Court for appointment of counsel pursuant to 10 *Del. C.* § 3925 and Rule 68 of the Delaware Supreme Court Rules. Said petition requests the United States District Court for referral to the President Judge of the Superior Court.

4. Delaware Supreme Court Rule 68(b)(2) states: “Where a public officer or employee is defendant in an action brought in the United States District Court for the District of Delaware, the petitioner may petition that Court for appointment of counsel. That Court may refer said petition to the President Judge of the Superior Court for appropriate action in accordance with applicable state law.” Supreme Court Rule 68(f) provides that “[w]henver the Department of Justice certifies to the appointing court that a conflict of interest exists, or may exist because of the appointment of a Department of Justice attorney ... the court may appoint an attorney from the private bar, if the court is satisfied that such conflict exists or may exist.”

5. The undersigned attorney is not aware of any precedent for the proper procedure for presenting this petition to the United States District Court, but believes this *ex parte* motion is an appropriate way to bring the matter to the Court’s attention.

6. Thus, pursuant to Rule 68 of the Delaware Supreme Court Rules, the Department of Justice requests the Court to refer this petition to the President Judge of the Superior Court for appointment of private counsel to represent Mr. Davis in the above-captioned case.

WHEREFORE, Petitioner respectfully asks the Court to refer this petition for appointment of counsel to the President Judge of the Superior Court of the State of Delaware.

STATE OF DELAWARE  
DEPARTMENT OF JUSTICE

/s/Ophelia M. Waters  
Ophelia M. Waters, I.D. No. 3879  
Deputy Attorney General  
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and TRANSIT,	)	
	)	
Defendants.	)	

**ORDER**

IT IS HEREBY ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2006, that the Department of Justice's petition for appointment of counsel pursuant to 10 *Del. C.* § 3925 and Rule 68 of the Delaware Supreme Court Rules is referred to the President Judge of the Superior Court of the State of Delaware.

\_\_\_\_\_  
Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on March 6, 2006, I electronically filed the Defendants *Motion for Referral for Appointment of Conflict Counsel*, with the Clerk of Court using CM/ECF. I hereby certify that on March 6, 2006, I have mailed by United States Postal Service, the document to the following non-registered participant: Terek Raheem Downing; SBI#; 00292285, Delaware Correctional Center, 1181 Paddock Rd, Smyrna, DE 19977.

/s/ Ophelia M. Waters

Ophelia M. Waters, I.D. No.3879  
Deputy Attorney General  
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